

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDWARD VAN HORN, 49115-019,

Plaintiff,

CIVIL ACTION NO. 12-11880

v.

DISTRICT JUDGE GEORGE CARAM STEEH

JAMES S. WALTON,
C. GOMEZ,
FEDERAL BUREAU OF PRISONS,
BARDSLY,

MAGISTRATE JUDGE MARK A. RANDON

Defendants.

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**REPORT AND RECOMMENDATION TO DENY PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT (DKT. NO. 32)**

This matter is before the Court on Plaintiff's Motion for Default Judgment. (Dkt. No. 32). Plaintiff requests a default judgment against Defendants James S. Walton, C. Gomez, and Bardsly, because he says they failed to file an answer by August 27, 2012.

On July 30, 2012, in lieu of an answer, Defendants filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (failure to state a claim upon which relief can be granted). (Dkt. No. 20). Rule 12(b)(6) requires Defendants to raise this defense in a motion before filing an answer. Accordingly, Defendants complied with the rules, and Plaintiff's motion should be **DENIED**.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 508 (6th Cir. 1991); *United*

States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). The filing of objections which raise some issues, but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. See *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within fourteen (14) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be no more than 20 pages in length unless, by motion and order, the page limit is extended by the court. The response shall address each issue contained within the objections specifically and in the same order raised.

s/Mark A. Randon

Mark A. Randon

United States Magistrate Judge

Dated: September 25, 2012

Certificate of Service

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, September 25, 2012, by electronic and/or ordinary mail.

s/Melody Miles

Case Manager